

(d) The term *assistance* means assistance under titles I, II and III of the Act in the form of grants or contracts involving Federal funds for the administration of which ACTION has primary responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title I, II, or III of the Act, but does not include individuals who ultimately receive benefits under any program of assistance or volunteers participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I, II and III.

(g) The term *party* in the case of a termination hearing means ACTION, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of assistance to the recipient pursuant to § 1206.1-5(e).

(h) The term *termination* means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

(i) The term *suspension* means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the terms and conditions of the document in which such assistance is extended, but does not include the refusal to provide new or additional assistance.

§ 1206.1-4 Suspension.

(a) *General.* The responsible ACTION official may suspend assistance to a recipient in whole or in part for a material failure or threatened material fail-

ure to comply with any requirement stated in § 1206.1-1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible ACTION official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible ACTION official shall notify the recipient by letter or by telegram that ACTION intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible ACTION official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible ACTION official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible ACTION official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible ACTION official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by ACTION.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible ACTION official may on his own initiative establish a time and place for such a meeting and notify the recipient in

writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible ACTION official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible ACTION official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible ACTION official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible ACTION official contemplated herein may request permission to do so from the responsible ACTION official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible ACTION official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible ACTION official shall invite voluntary action to adequately correct the deficiency

which led to the initiation of the suspension proceeding.

(9) The responsible ACTION official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b) (3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible ACTION official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with §1206.1-5, or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible ACTION official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

NOTE: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible ACTION official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension

action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible ACTION official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with §1206.1-5 or unless the responsible ACTION official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible ACTION official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of: (i) Substantial injury to or loss of project funds or property, or

(ii) Violation of a Federal, State or local criminal statute, or

(iii) Violation of section 403 of Pub. L. 93-113 or of ACTION rules, regulations, guidelines and instructions, published in accordance with section 420 of Pub. L. 93-113, implementing this section of the Act, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation

of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible ACTION official shall advise the recipient that it may request ACTION to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible ACTION official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible ACTION official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible ACTION official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b) (6), (7), and (8) of this section. Agencies may submit written material to the responsible ACTION official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b) (6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with §1206.1-5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show

cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible ACTION official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible ACTION official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1-5 Termination.

(a) If the responsible ACTION official believes that an alleged failure to comply with any requirement stated in §1206.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefor. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with §1206.1-6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§1206.1-7 and 1206.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Con-

sideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by ACTION. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in §1206.1-1. In any termination hearing, ACTION shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in §1206.1-1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests ACTION to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to ACTION. The recipient shall promptly send ACTION a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible ACTION official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible ACTION official a list of all agencies notified and the date of notification.

(e) If the responsible ACTION official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with §1206.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACTION and the recipient,